



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2016-0470; FRL-9958-72-Region 7]**

**Approval of Missouri's Air Quality Implementation Plans; Open Burning Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri related to open burning. On November 24, 2009, the Missouri Department of Natural Resources (MDNR) requested to amend the SIP to replace four area specific open burning rules into one rule that is area specific and applicable state-wide. EPA solicited comment in an earlier proposed rulemaking that published in the **Federal Register** on September 8, 2016, and received one comment in support of the proposed SIP revision. These revisions to Missouri's SIP do not have an adverse effect on air quality as demonstrated in the technical support document (TSD) which is a part of the proposed rulemaking docket. EPA's final approval of these SIP revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** .

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2016-0470. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov) or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7718, or by email at [brown.steven@epa.gov](mailto:brown.steven@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Final Approval of a SIP Revision Been Met?
- III. What Action is EPA Taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

## **I. What is Being Addressed in this Document?**

EPA is taking final action to approve the SIP revision submitted by the state of Missouri that replaces four area specific open burning rules with a rule that is applicable state-wide. On November 24, 2009, the MDNR requested to amend the SIP to rescind Missouri Open Burning Restrictions 10 CSR 10-2.100, 10 CSR 10-3.030, 10 CSR 10-4.090, and 10 CSR 10-5.070, and consolidated these four rules into a new rule 10 CSR 10-6.045. The new rule adds language that allows burning of "trade wastes" by permit in areas for situations where open burning is in the best interest of the general public or when it can be shown that open burning is the safest and most feasible method of disposal. The rule reserves the right for the staff director to deny, revoke or suspend an open burn permit. It changes the general provisions section by not limiting liability to an individual who is directly responsible for a violation and extends the regulatory liability to any person, such as a property owner who hires an individual to start the fire. The rule also adds the definition of "untreated wood" for clarification to aid in compliance purposes. On September 8, 2016, EPA proposed approval of the SIP revision in the **Federal Register** (81 FR 62066), the comment period closed on October 11, 2016. During this period, on October 11, 2016, EPA received one

comment which is included in the docket from an unknown commenter that supports this final rule.

## **II. Have the Requirements for Final Approval of a SIP Revision Been Met?**

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document (TSD) which is part of the proposed rulemaking docket that published in the **Federal Register** on September 8, 2016, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

## **III. What Action is EPA Taking?**

EPA is finalizing approval of revisions to the Missouri SIP regarding an open burn regulation that replaces four area specific open burning rules. EPA has conducted a full evaluation of the regulation, which is discussed in detail in the proposed rule and the TSD, which is included in this rulemaking docket.

We are processing this as a final approval action after soliciting comments on a proposed action. The public comment

period on EPA's proposed rule opened on September 8, 2016, the date of its publication in the **Federal Register** (81 FR 62066), and closed on October 11, 2016.

#### **IV. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference the amendments to 40 CFR part 52 as set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup> EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 20, 2017.

Edward H. Chu,  
Acting Regional Administrator,  
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

**PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et. seq.*

**Subpart AA-Missouri**

2. In §52.1320, the table in paragraph (c) is amended by:

a. Removing entries "10-2.100", "10-3.030", "10-4.090", and "10-5.070".

b. Adding the entry "10-6.045" in numerical order.

The addition reads as follows:

**§52.1320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-Approved Missouri Regulations**

<b>Missouri citation</b>	<b>Title</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
<b>Missouri Department of Natural Resources</b>				
* * * * *				
<b>Chapter 6-Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri</b>				
* * * * *				
10-6.045	Open Burning Requirements	9/30/09	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2017-06009 Filed: 3/27/2017 8:45 am; Publication Date: 3/28/2017]